



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Social and Health Services, Aging and Disability Services Administration

Permanent Rule Only

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: The department amended these rules to comply with and to be consistent with Initiative 1163, Engrossed Substitute House Bill (ESHB) 1277 as codified in chapter 70.128 RCW and Engrossed Substitute House Bill (ESHB) 2314. In addition to implementing Initiative 1163, ESHB 1277 and ESHB 2314, the department clarified the provision related to disqualifying crimes related to drugs. The department added the following new sections: WAC 388-76-101631-Background checks-Process-Washington state name and date of birth background check; WAC 388-76-101632-Background checks-Process-National fingerprint background check; WAC 388-76-10166-Background checks-Household members, noncaregiving and unpaid staff-Unsupervised access; WAC 388-76-10176-Background checks-Employment-Provisional hire-Pending results of national fingerprint background check; WAC 388-76-10181-Background checks-Employment-Nondisqualifying information

Citation of existing rules affected by this order:

Repealed: WAC 388-76-10162

Amended: WAC 388-76-10025, WAC 388-76-10120, WAC 388-76-10146, WAC 388-76-10160, WAC 388-76-10161, WAC 388-76-10163, WAC 388-76-10164, WAC 388-76-10165, WAC 388-76-10175, WAC 388-76-10180, WAC 388-76-10200, WAC 388-76-10955

Suspended: None

Statutory authority for adoption: RCW 70.128.040

Other authority: NA

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 12-09-071 on April 17, 2012 (date).

Describe any changes other than editing from proposed to adopted version:

See Attachment A

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: N/A

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

Date adopted:

July 30, 2012

NAME (TYPE OR PRINT)

Katherine Vasquez

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 31, 2012

TIME: 3:34 PM

WSR 12-16-087

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>5</u>	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	12	Repealed	<u>1</u>
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>5</u>	Amended	12	Repealed	<u>1</u>

Attachment A --CR-103

WAC 388-76-10146 Qualifications--Training and home care aide certification.

(3) All persons listed in subsection ~~(4)~~ (2) of this section, must obtain the home-care aide certification if required by this section or chapters 246-980 WAC or 388-112 WAC.

~~(4) All adult family home applicants on or after January 7, 2012, Even if an adult family home applicant does not intend to provide direct personal care, the applicant must meet the long-term care worker training requirements of chapter 388-112 WAC and obtain the home-care aide certification if required by chapter 246-980 WAC. requirements under chapter 388-112 WAC to the same extent that the requirements would apply if the applicant was a long-term care worker.~~

(5) Under RCW 18.88B.0401 and chapter 246-980 WAC, certain ~~persons~~ individuals, including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant programs, are exempt from home-care aide certification and long-term care worker training requirements. This exemption does not apply to Continuing education; these individuals must comply with continuing education requirements still apply as outlined in under chapter 388-112 WAC.

WAC 388-76-101631 Background checks ~~Process~~ Washington state name and date of birth background check. ~~(1) Before receiving the results of the Washington state name and date of birth background check, the adult family home may conditionally employ, directly or by contract, a caregiver, entity representative or resident manager as provided in WAC 388-76-10175.~~

(2) After receiving the results of the Washington state name and date of birth background check, the adult family home must:

(a1) Not employ, directly or by contract, a caregiver, entity representative or resident manager convicted of a disqualifying crime or a disqualifying finding under WAC 388-76-10180.

(b2) Not allow a household member over the age of eleven, volunteer, student or noncaregiving staff to have unsupervised access to residents if they have been convicted of a disqualifying crime or disqualifying finding under WAC 388-76-10180.

WAC 388-76-101632 Background checks ~~Process~~ National fingerprint background check. (1) Individuals specified in WAC 388-76-10161(2) who are hired after January 7, 2012 and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

~~(2) Before receiving the results of the national fingerprint background check, the adult family home may provisionally employ, directly or by contract, a caregiver, entity representative or resident manager as provided in WAC 388-76-10176.~~

(32) After receiving the results of the national fingerprint background check the adult family home must not employ, directly or by contract, a caregiver, entity representative or resident manager who has been convicted of a disqualifying crime or who has a disqualifying finding under WAC 388-76-10180.

(43) The provider may accept a copy of a national fingerprint background check result letter and any additional information from the department's background check central unit ~~(BCCU)~~ from an individual who previously completed a national fingerprint background check through the background check central unit BCCU, provided the national fingerprint background check was completed after January 7, 2012.

WAC 388-76-10180 Background checks--Employment--Disqualifying information. ~~Except as provided in WAC 388-76-10175 and 388-76-10176, t~~ The adult family home must not employ anyone, directly or by contract, who is listed in WAC 388-76-10161(2) if the individual has any of the convictions, history, or findings, described below:

(1) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(2) Has been convicted of a crime in any federal or state court ~~or in any other state~~, and the department determines that the crime is equivalent to a crime under subsections (e3), (d4), (e5), (f6), or (g7), below;

(3) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years ~~has~~ have passed since conviction;

(4) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years ~~has~~ have passed since conviction;

(5) Has been convicted of the manufacture or delivery of drugs or of possession with intent to manufacture or deliver drugs under one of the following laws:

(a) Violation of the Imitation Controlled Substances Act (VICSA);

(b) Violation of the Uniform Controlled Substances Act (VUCSA);

(c) Violation of the Uniform Legend Drug Act (VULDA); or

(d) Violation of the Uniform Precursor Drug Act (VUPDA).

(6) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(7) Has been convicted of criminal mistreatment;

(8) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26, RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

(9) Has a finding of abuse or neglect of a child that is:

(a) Listed on the department's background check central unit report (~~BCCU~~); or

(b) Disclosed by the individual, except for findings made before December, 1998.

(10) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(a) Listed on any registry, including the department's registry;

(b) Listed on the department's background check central unit report (~~BCCU~~); or

(c) Disclosed by the individual, except for adult protective services findings made before October, 2003.

(11) Pending the results of the background checks, conditional or provisional hiring may be allowed under WAC 388-76-10175 and WAC 388-76-10176.

WAC 388-76-10181 Background checks Employment Nondisqualifying information. (1) If any background check results show that an employee or prospective employee has a conviction or finding that is not automatically disqualifying under WAC 388-76-10180, then the adult family home must:

(a) Determine whether the person has the character, competence and suitability to work with vulnerable adults in long term care; and

(b) Document in writing the basis for making the decision, and make it available to the department upon request.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

The changes were made because:

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE
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	REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p>WAC 388-76-10146</p> <p>(3) Clarification is needed for references on home-care aide certification requirements.</p> <p>(4) Clarification is needed on what long-term care worker training and certification requirements apply to adult family home applicants.</p> <p>(5) Clarification is needed that individuals who may be exempt from the home-care aide certification and long-term care worker training requirements, still need to comply with continuing education requirements.</p>	<p>The Department has accepted this comment and clarified the references.</p> <p>The Department has accepted this comment and clarified that applicants will have the same requirements around training and certification as long-term care workers.</p> <p>The Department has accepted this comment and clarified that continuing education requirements still apply to these individuals.</p>
<p>WAC 388-76-101631 and WAC 388-76-101632</p> <p>Suggest conditional and provisional language be deleted since it is duplicative and already in other WAC sections.</p>	<p>The Department has accepted this comment and deleted WAC 388-76-101631 (1) and WAC 388-76-101632 (2) since it is already covered in WAC 388-76-10175 and WAC 388-76-10176.</p>
<p>WAC 388-76-10180</p> <p>Suggest deleting the introductory phrase since the adult family home cannot hire anyone with these convictions if they have knowledge about it.</p>	<p>The Department has accepted this comment and deleted the introductory phrase. The Department has also added a new subsection 11 to clarify that pending the results of the background checks, conditional and provisional hiring may still be allowed under the relevant WAC sections.</p>
<p>WAC 388-76-10181 (1)(b) Documentation in writing for the basis of the decision needs to be kept in a consistent place.</p>	<p>The Department has accepted this comment and clarified that the documented decision needs to be made available to the Department upon request.</p>